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Regulatory
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Final Regulation Agency Background Document

Agency name	Department of Charitable Gaming
Virginia Administrative Code (VAC) citation	<u>11</u> VAC <u>15</u> - <u>22</u>
Regulation title	Charitable Gaming Rules and Regulations
Action title	Changes to incorporate recent amendments to the Code of Virginia and update related provisions, including the computation and percentage of gross receipts that are required to be used for charitable purposes by qualified organizations.
Document preparation date	September 28, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The primary focus of the amendments is to reflect numerous relevant changes that have occurred in the Code of Virginia since the current regulations became effective (January 1, 1998). Other substantive changes include establishing a uniform use-of-proceeds requirement and establishing standardized reporting requirements for all permitted organizations. Other changes simplify, clarify and in some instances eliminate unnecessary regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 13, 2005, after thorough review of all written public comments on the proposed regulations, in addition to verbal comments received at both their June 7, 2005 and September 13, 2005

meetings, the Charitable Gaming Board voted unanimously to adopt the Charitable Gaming Rules and Regulations as final.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 18.2-340.15, *et seq.*, Code of Virginia provides that the Department is vested with control of all charitable gaming in the Commonwealth and that the Board shall have the power to prescribe regulations and conditions under which such gaming is authorized. Acts 2003, c.884, cl. 5 provides: "That the Charitable Gaming Board shall examine regulations, including the computation and percentage of gross receipts that are required to be used for charitable purposes by qualified organizations and provide a report to the Governor and the 2004 session of the General Assembly. The report shall include the Board's plans regarding regulatory action on these issues, and anticipated timetable for such action."

The required report, which was submitted on December 2, 2003, concluded: "The Board concurs that a comprehensive revision to the Charitable Gaming Rules and Regulations and the Supplier Rules and Regulations is needed..." The Board reported an anticipated timetable for the process to amend the regulations as approximately 18 months to complete, occurring between June 2004 and January 2006. Based in part on this report, the 2004 General Assembly extended a moratorium in the Code that requires that the Department shall not revoke the charitable gaming permit of any qualified organization based solely on failure to meet the required percentage of gross receipts used for charitable purposes until such time as the Board adopts amended regulations (Chapter 213, 2004 Acts of Assembly).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The 2003 General Assembly (Chapter 884, 2003 Acts of Assembly) created the Department of Charitable Gaming (the Department) and the Charitable Gaming Board (the Board) to replace the former Charitable Gaming Commission (the Commission). The current Charitable Gaming Rules and Regulations were adopted by the former Commission and became effective January 1, 1998. The current regulations include many references to the Commission, which no longer exists, as well as other statutes that have since been amended. The goal of the amended regulations is to simplify and clarify the regulations while also making them consistent with current statutes.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The regulations contain 54 references to the former Charitable Gaming Commission that are proposed to now be changed to the Department of Charitable Gaming or Charitable Gaming Board where appropriate and consistent with the statute. Several definitions are proposed to be updated and clarified. A new section is proposed to provide structure for the Department to deny, suspend or revoke a permit while also providing alternative procedures in lieu of denial, suspension or revocation. The Charitable Gaming fiscal year is proposed to be changed from the current fiscal year of October 1 to September 30 to now be consistent with the calendar year.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*
If there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to the public is that through consistent and effective regulation, the public will be able to participate in bingo, instant bingo and raffles that provide funding for charitable organizations while ensuring the highest level of integrity is maintained. This will protect the public from fraud while increasing the funding for charity. There are no disadvantages to the public in the proposed regulations.
- 2) The primary advantage to the Commonwealth is that by requiring consistent reporting methods from all charities, the Department will be more efficient in audit and control of permitted gaming activities and better able to detect and prosecute fraud, theft and other irregularities. There are no disadvantages to the Commonwealth in the proposed regulations.
- 3) The regulated community should benefit from regulations that are clearer and more concise, and therefore more easily complied with. The regulated community may see some additional record keeping and reporting requirements that are necessary for the privilege to conduct charitable gaming in the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
40.W	Only qualified organizations are allowed to advertise a bingo game	Facilities and registered suppliers may also advertise a bingo game	Recommended by public comment, Board felt was appropriate recommendation
50.J	WINGO limited to organizations for hearing impaired	WINGO limited for hearing impaired players	Recommended by public comment, Board felt it clarified intent

70.A	Adds additional record keeping requirements	Specifies the period of time of the requirement is three years, unless otherwise specified.	Recommended by public comment as a clarification
70.B	Establishes record keeping requirements for raffles	Clarifies that the requirement does not apply to pull tabs or seal cards as they are covered in subsection A	Clarification recommended by public comment
100.A	Requires all terms for rent or use of a building where bingo is played must be specified in a written agreement	Adds requirement that any building used more frequently than two days per week must be leased directly from a qualified organization	Recommended by public comment, Board felt it was good policy

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Chuck Lessen	Concerned about 1% discount limit as it applied to frequent player reward system	Board discussed potential exemption at June meeting, but comments from audience were opposed to adding the exemption. Board decided to leave 1% discount limit. Department met with commenter to discuss how to adjust frequent player reward so that it would not fall under definition of "discount"
Robert Goolrick, VA Elks Assoc.	Expressed overall support for proposed regulations, gave numerous technical suggestions	All suggestions were adopted in final regulations and are included in previous section
Nina McIntosh	Suggested adding definition for "site system"	Board felt it was not necessary and would make regulation more confusing
Connie Faivre	General support for proposed regulations, suggested several issues that are statutory and not regulatory	Advised her to contact state legislators regarding her comments that would require statutory changes
Peter Chiusano Skip Blanchard Jerry Martin	Suggested 5% versus 10% use-of-proceeds requirement	The Board discussed this issue at length. The Department demonstrated a corrective action plan and procedure for granting waivers to the requirement. Based on this safeguards, the Board voted to maintain the 10% requirement.
Peter Chiusano	Suggested advertising should be allowed by facility owners and suppliers	Adopted in final regulations
Peter Chiusano	Proposed restriction to eliminate ability of for-profit to rent and then sublease a facility owned by a qualified organization	Adopted in final regulations
Johnette Chapman	Suggested allowing volunteers to purchase seal cards after completing work	Not allow under existing regulations, the Board proposed no change to that regulation

Calvin Shrum	Opposed to requirement to use Department issued forms	Met with Mr. Shrum and have invited him to make suggestions to amend the required forms to make them more user friendly
badahlke@juno.com	Suggested volunteer workers should be allow to by pull tab before and after working	Not allow under existing regulations, the Board proposed no change to that regulation
Thom Harrington	Felt 50.I.1.a and 1.b were in conflict with each other	Reviewed proposal and determined they are not in conflict
Thom Harrington	Felt WINGO should not be limited to organizations for hearing impaired, but for hearing impaired players	Adopted in final regulations
Thom Harrington	Suggested visual device used for WINGO should allow camera and monitor	Department believes this is allowable with proposed language
Thom Harrington	Wrong word was used in text, parties versus persons	Typographical error in proposed regulations was corrected in final regulations

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
15-22-10		Definitions	Clarified and added new definitions consistent with statutes. Adds Board approval to variations on bingo and raffle games "Decision Bingo", "Lucky Seven", "Treasure Chest" and "Wingo".
15-22-20		Use-of-proceeds range from 5% to 12% depending on variety of factors, permit must be suspended or revoked for failure to meet minimum requirement	Standard 10% requirement for all organizations will promote consistency and fairness. Will allow for corrective action prior to suspension or revocation of permit and ability to request waiver from requirement based on certain circumstances.
15-22-30		Permit requirements	Makes the process for renewal and changes to a permit simpler. Initial requirements are essentially unchanged.
	15-22-30:1	Authority established in Code but regulations do not provide guidance	Establishes circumstances, under which a permit may be suspended, revoked or denied; allows for alternatives in lieu of suspension, revocation or denial; and, establishes terms that govern permit

			suspensions in order to provide better guidance to the Department.
15-22-40		Allows children age 11 to 18 to participate in the operation and management of gambling. Allows children age 11 to 13 to participate in the conduct of bingo with written permission from a parent or legal guardian. Organizations can alter bingo paper once purchase from a supplier. Organizations are unlimited in the amount of discounts they may provide.	Children under age 18 would be able to be involved in the conduct of bingo but not the management or operation. Requires that children age 11 to 13 can only participate in the conduct of bingo when accompanied by a parent or legal guardian. This change was requested by many charitable organizations. Bingo paper can not be altered from its original form once purchased, thus eliminating a possibility of fraud. Organizations were losing money by giving away too many discounts in order to keep up with the competition. Limiting discounts to 1% for all organizations will eliminate this practice and generate more money for charity.
15-22-50		Requires mixing of instant bingo cards before sale. Allows 72 card faces in each electronic device.	Mixing of cards is no longer necessary due to new manufacturing techniques. Organizations can continue to mix them if they wish but it will no longer be required in regulation. Reduces number of card faces to 54 in electronic devices in response to requests from public. Added rules of play for "decision bingo", "treasure chest", "lucky seven" and "wingo". Rules of play are required by law for new games.
15-22-60		Requires separate bank account for gaming funds.	Clarifies language.
15-22-70		Charities can keep records on any system. Organizations can destroy unused gaming supplies.	Charities will be required to use only Department issued or approved forms for reporting in order to make reporting uniform, enhance the audit process, reduce fraud and theft and increase funds for charity. Proposed regulations further clarify record keeping requirements. Unused gaming supplies must either be returned to supplier or turned into the Department for disposal to eliminate fraud.
15-22-80		Current fiscal year for reporting purposes is Oct. 1 to Sept. 30. Current late fee of \$25 per day ends at 30 day.	Changes report requirements so that gaming fiscal year is consistent with the calendar year to eliminate confusion. Late fee will continue to be calculated until late report is received, providing continuing incentive for organizations to get reports in on time.
15-22-90		Provides guidance on use-of-proceeds.	Clarifies language.
15-22-100		Rent can be paid out of organization' general fund. Equipment must be itemized in lease.	Rent must be paid out of charitable gaming account to better track funds. Unnecessary for lease to itemize equipment.

15-22-110		Fact Finding Conferences	Technical adjustments per statutory changes
15-22-120		Reporting Violations	Technical adjustments per statutory changes

Enter any other statement here

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

As the proposed regulations further limit the involvement of minors and increase the required involvement of parents if minors are involved in gaming, there may be some minimal strengthening of the institution of the family and family stability.